

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 3380-07  
Bill No.: Perfected HS for HCS for HB 1304  
Subject: Corporations; Courts; Judges; Liability; Health Care Professionals; Physicians  
Type: Original  
Date: March 10, 2004

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Highway Fund	Unknown	Unknown	Unknown
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>Unknown</b>	<b>Unknown</b>	<b>Unknown</b>

Numbers within parentheses: ( ) indicate costs or losses.  
This fiscal note contains 6 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2005</b>	<b>FY 2006</b>	<b>FY 2007</b>
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2005</b>	<b>FY 2006</b>	<b>FY 2007</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**FISCAL ANALYSIS**

**ASSUMPTION**

Officials from the **Department of Health and Senior Services, Department of Labor and Industrial Relations, Missouri Consolidated Health Care Plan, Department of Insurance,** and the **Department of Conservation** assume the proposal would have no fiscal impact on their agencies.

In response to a previous version of the proposal, officials from the **Office of Attorney General, Office of Administration – Administrative Hearing Commission, – Division of Budget and Planning,** and the **Department of Mental Health** assumed the proposed legislation would have no fiscal impact on their agencies.

Officials from the **Office of State Courts Administrator (CTS)** assume the proposed legislation would modify the allowable interest on certain judgments by tying it to the price of U.S. Treasury Bills. CTS is to distribute notice of such rates and any changes in such rates to the circuit clerks of all circuit courts in Missouri. Since the rate of interest on U.S. Treasury bills changes weekly, even daily, there would be an amount of clerical time spent each day to research and “publish” the rate. The variable rate would also have the potential effect of creating more litigation, but CTS has no way of calculating what that increase might be.

ASSUMPTION (continued)

Interest rates would be based on the auction price for the last auction of fifty-two week United States Treasury bills. These bills are auctioned every four weeks, or thirteen times per year. Therefore, **Oversight** assumes the Office of State Courts Administrator (CTS) could absorb the cost of distributing the interest rate on certain judgments to circuit court clerks and the cost of any litigation created by the proposed legislation. If CTS experiences an increase that would justify additional FTE, funding could be requested through the appropriation process.

In response to a previous version of the proposal, officials from the **Department of Transportation (MoDOT)** assumed the proposal incorporates the application of doctrine of joint and several liability in tort claims. The doctrine of joint and several liability contemplates that regardless of the percentage of fault assessed among all co-defendants, each one of these defendants is liable to pay the entire judgment if one or more of the remaining co-defendants cannot pay. This legislation limits the application of joint and several liability against a defendant in a tort action, which would include Missouri Highways and Transportation Commission (MHTC), only if the defendant is found to be fifty or more percent at fault. This provision could be advantageous to MHTC/MoDOT. However, an accurate estimate would be impossible to determine as the benefit of this revision would depend upon the number of cases impacted, the potential liability of MHTC in such cases, and other related factors.

<u>FISCAL IMPACT - State Government</u>	FY 2005 (10 Mo.)	FY 2006	FY 2007
<b>HIGHWAY FUND</b>			
<u>Savings – Department of Transportation</u> Liability limits	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
<b>ESTIMATED NET EFFECT ON HIGHWAY FUND</b>	<b><u>Unknown</u></b>	<b><u>Unknown</u></b>	<b><u>Unknown</u></b>
<u>FISCAL IMPACT - Local Government</u>	FY 2005 (10 Mo.)	FY 2006	FY 2007
	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>

### FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

### DESCRIPTION

The proposed legislation would make changes to the laws affecting claims for damages and the payment thereof. In its main provisions, the proposal would:

Detail the procedures for service of process, notice, or demand on a corporation (Section 355.176).

Allow parties to introduce evidence of the amount actually paid for medical treatment (Section 490.715).

Establish venue in all tort actions in which the cause of action occurred in Missouri, including torts for improper health care, in the county where the cause of action occurred. In all tort actions in which the cause of action occurred outside Missouri, the proposal would establish venue: (a) For individual defendants, in the county of the individual's principal place of residence; and (b) For corporate defendants, in the county where the corporate defendant's registered agent is located or, if no registered agent is reported or maintained, in Cole County. Venue in all actions in which a county is the plaintiff would be established in the county where the defendant resides, or in the county suing and where the defendant may be found. Motions to dismiss or transfer based upon improper venue would be required to be to be deemed granted if not denied within 60 days, unless the time period is waived in writing by all parties (Section 508.010).

Allow discovery of a defendant's assets in tort actions, including torts for improper health care, only after a court determines that the plaintiff has a submissible case on punitive damages (Section 510.263).

Provide that a defendant will be jointly and severally liable for the amount of compensatory and noneconomic damages only if the defendant is found to bear 51% or more of the fault, and a defendant will not be jointly and severally liable for more than the percentage of punitive damages for which fault is attributed to the defendant by the trier of fact (Section 537.067).

Add long-term care facilities licensed pursuant to Chapter 198, RSMo, to the definition of "health care provider" as used in Chapter 538 (Section 538.205).

DESCRIPTION (continued)

Change the cap on noneconomic damages from \$350,000, adjusted annually for inflation (currently equal to \$565,000), to \$350,000, without an inflation adjustment, and removes the “per occurrence” language in order to overrule a Missouri Supreme Court decision (Section 539.210).

Limit civil damages recoverable against certain physicians, dentists, hospitals, and others to \$400,000 for care or assistance necessitated by traumatic injury and rendered in a hospital emergency room (Section 538.213).

Require the expert to be licensed in substantially the same profession and specialty as the defendant and allows any defendant to request that the court review the expert opinion to determine whether the expert meets the required qualifications (Section 538.225).

Prohibit statements, writings, or benevolent gestures expressing sympathy from being admissible as evidence of an admission of liability in a civil action. Statements of fault would be admissible (Section 538.226).

The proposal would allow tort action judgments to bear interest at a rate equal to the coupon issue yield equivalent of the average accepted auction price for the last auction of the two-year U.S. Treasury Notes (Section 408.040 – HA 1).

The proposal contains a severability clause (Section 1).

The proposal would clarify that the provisions would only apply to causes of action filed after August 28, 2004.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of the Attorney General  
Office of Administration  
    – Administrative Hearing Commission  
Office of State Courts Administrator  
Department of Transportation  
Department of Mental Health  
Department of Health and Senior Services  
Department of Labor and Industrial Relations  
Missouri Consolidated Health Care Plan  
Department of Insurance  
Department of Conservation



Mickey Wilson, CPA  
Director  
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